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November 13, 2006

VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

Delta Protection Commission
14215 River Road
P.O. Box 530
Walnut Grove, CA 95690

Re: Appeals of Natural Resources Defense Council and the Concerned Citizens of Clarksburg, et al.

Dear Commissioners:

This letter sets forth the position of the County of Yolo ("County") regarding the jurisdictional issues before the Delta Protection Commission ("Commission") at the upcoming November 16, 2006, public hearing on the above-referenced appeals.

INTRODUCTION

As the Commission is aware, these appeals concern the consistency of the Old Sugar Mill Specific Plan (the "Old Sugar Mill project")—approved by the Board of Supervisors ("Board") on October 24, 2006—with the Commission's Land Use and Resource Management Plan ("Resource Management Plan"), the Delta Protection Act ("Act"), and the County General Plan.[1] Prior to addressing consistency, however, California law requires the Commission to

[1] The County addressed the jurisdiction and consistency issues in detail in the Environmental Impact Report ("EIR") for the Old Sugar Mill project. The County incorporates that discussion by reference herein, specifically including the jurisdictional discussion at pages 2-1.60 through 2-1.69 of the Recirculated Draft EIR. In approving the project, the Board ultimately determined that the Old Sugar Mill project is fully consistent with the Resource Management Plan, the Act, and the County General Plan.

resolve two jurisdictional issues. Commission staff explain in a November 7, 2006, staff report ("Staff Report") that these issues are: (a) whether the Old Sugar Mill project is located in the "primary zone" of the Delta, as defined in the Act; and (b) if so, whether the Old Sugar Mill project is "development" within the meaning of the Act. The Staff Report states that each of these issues should be resolved in favor of Commission jurisdiction over the appeals.[2] The County, which considered these issues at length during the review process for the Old Sugar Mill project, respectfully disagrees for the following reasons.

First, the Old Sugar Mill project site is not in the "primary zone" of the Delta. The legal definition of "primary zone" plainly excludes land "within either the urban limit line or sphere of influence of any local government's general plan or currently existing studies, as of January 1, 1992." (Pub. Resources Code, § 29728.) Long before January 1, 1992, the County approved an urban limit line encompassing the Old Sugar Mill project site and other developed areas within the small, unincorporated town of Clarksburg. (*See* Staff Report, Attach. A, Map 5 [1982 Clarksburg General Plan].) The project site is therefore within the clear, unambiguous, and specific scope of the language *excluding* such areas from the Primary Zone. While the "Delta Protection Zones" map omits the Clarksburg urban limit line and thus does not fully reflect all established urban boundaries, the map cannot change what the Act so clearly says.

Second, even if the Commission finds that the Old Sugar Mill project site is within the Primary Zone, the project is not "development" regulated by the Act. The Act defines "development" as excluding, among other things, "construction, reconstruction, demolition, and land divisions within existing zoning entitlements, and *development within, or adjacent to, the unincorporated towns of the delta, as permitted in . . . the general plan of Yolo County, authorized prior to January 1, 1992.*" (Pub. Resources Code, § 29723, subd. (b)(9) (italics added).) There is no question that development of the Old Sugar Mill project site was "permitted" as of January 1, 1992—the project site was already zoned for and developed with an industrial facility and related improvements. (*See* Staff Report, Attach. A, Maps 4, 5, and 7.) The project site was developed then and can be redeveloped now; it is not "frozen in time" by the Act, as this exclusionary language makes clear.

Importantly, the County's position on these threshold issues has been carefully crafted to ensure that the constitutionality of the Act is maintained. The regulatory scheme set forth in the Act is intended to protect the resource values of the Delta by requiring local governments to administer and adhere to "comprehensive regional land use planning" policies included in the Resource Management Plan. The Act does not appear to contemplate—and certainly cannot be read to require—the selective application of this regulatory scheme to infill and other

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[2] The Staff Report also concludes that the appeals each raise "appealable issues." The County does not dispute that conclusion.

development projects within a handful of small, unincorporated towns, but not to similar (and often many times larger) projects within incorporated cities. But singling out certain unincorporated towns is not merely at odds with the plain language of the Act. It is also unconstitutional, as uniform treatment of all affected local governments is required for reasons that are explained further below.

As a final, preliminary matter, the County points out that the scope of the jurisdictional issues raised by these appeals is extremely narrow. Regardless of the Commission's decision, its jurisdiction over local land use decisions in the vast majority of the Primary Zone—including the hundreds of thousands of acres of undeveloped agricultural land and habitat lying outside of unincorporated towns—will remain unquestioned if the Act's constitutionality is preserved. Only a tiny fraction (less than one percent) of the Delta is within the boundaries of the handful of small, unincorporated towns that could be affected by the Commission's decision on the jurisdictional and consistency issues raised by this appeal. But to these towns, the Commission's decision could have profound consequences, as the County will further explain if the Commission assumes jurisdiction over these appeals and proceeds to consider the consistency issue at a future public hearing.

A. <u>The Statutory Definition of "Primary Zone" Conclusively Excludes the Project Site, and the Map Cannot Contradict or Supersede the Clear and Specific Exclusionary Language of the Act</u>.

The statutory definition of "primary zone," set forth at Public Resources Code section 29728, is critical to the initial jurisdictional issue before the Commission. In pertinent part, that definition reads as follows:

> "Primary zone" means the delta land and water area of primary state concern and statewide significance which is situated within the boundaries of the delta, as described in Section 12220 of the Water Code, but that is not within either the urban limit line or sphere of influence of any local government's general plan or currently existing studies, as of January, 1, 1992. The precise boundary lines of the primary zone includes [sic] the land and water areas as shown on the map titled "Delta Protection Zones" on file with the State Lands Commission.

The County respectfully submits that this definition is clear, unambiguous, and internally consistent. The first sentence of the definition explains in general terms what the Primary Zone is (i.e., "the delta land and water area of primary state concern and statewide significance . . ."), but it also specifically explains what it is not (i.e., all land "within either the urban limit line or sphere of influence of any local government's general plan or currently existing studies,

as of January 1, 1992").[3] The second sentence of the definition references the "Delta Protection Zones" map, which is to show "[t]he precise boundary lines of the primary zone . . . ." Neither sentence, nor any part of either sentence, appears to be unclear or inconsistent.

Under the exclusionary language included in this definition, the Old Sugar Mill project site is not within the Primary Zone. The project site was within the urban limit line of the County General Plan as of January 1, 1992. At that point in time, an industrial facility had operated on the site for decades and the site was zoned for heavy industrial (M-2) use.[4] Consequently, the Old Sugar Mill site is excluded from the Primary Zone. This is not a manner of statutory interpretation that requires an exhaustive review of legislative history and other indicia of legislative intent. It is a conclusion drawn directly from what the Act plainly *says*.

As the Commission is aware, the "Delta Protection Zones" map properly excludes all incorporated cities and at least one unincorporated town (Oakley)[5] from the Primary Zone. But for some reason, it shows all of Clarksburg and several other unincorporated towns as lying within the Primary Zone. Nothing in the exclusionary language in the "primary zone" definition permits this incongruity. The exclusionary language is not vague or ambiguous—it is clear, specific, and precise. Nor is it "merely descriptive of the rationale used by the Legislature in drawing the particular line on the map[]," as in Coastal Act dispute discussed in the Staff Report. (*Rossco, Inc. v. State* (1989) 212 Cal.App.3d 642.) The exclusionary language does not "describe the rationale" for drawing lines on maps; it instead excludes certain urban areas from regulation entirely.

Despite the clarity of the statutory language, the Staff Report and papers submitted by the Appellants state that the map supersedes the exclusionary language in the "primary zone" definition. The County respectfully submits that every argument offered in support of this conclusion is unpersuasive:

- ***The "primary zone" definition is clear, unambiguous, and internally consistent.*** The plain language of the "primary zone" definition does not become ambiguous simply because the map is inconsistent with the definition. Indeed, the Staff Report appears to recognize that the only "inconsistency" that exists is not within the Act, but instead

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[3] The Act expressly defines "local government" to include "the Counties of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo[.]" (Pub. Resources Code, § 29728.)

[4] See Staff Report, Attach. A, Maps 4, 5, and 7. The Staff Report suggests, however, that it is a "close call" whether a site designated, zoned, and used for industrial purposes is "urban development" within the meaning of the statutory definition of "urban limit line." The County is not aware of any legal authority for this suggestion; to the contrary, the County believes it cannot reasonably be disputed that a site designated and zoned for heavy industrial use (including non-agricultural uses) and used for such purposes is "urban development" under any plausible interpretation.

[5] The City of Oakley incorporated in July 1999, several years after the Act was adopted.

exists only between the plain language of the statute and the map.[6] Under California law, if statutory language is clear, then a court presumes that the Legislature meant what it said and the plain meaning of the statute governs.[7] The absence of "precise boundary lines" delineating some urban limit lines and spheres of influence on the map is thus of no consequence. The Legislature meant what it said, and the specific exclusionary language in the "primary zone" definition controls in the event of a conflict with the map. A contrary result would violate the established rule that "all parts of a statute should be read together and construed in a manner that gives effect to each, yet does not lead to disharmony with others."[8] The Staff Report overlooks this rule and instead offers an approach that would render the clear exclusionary language obsolete in certain situations. The County's position avoids this result by simply giving effect to what the Act says.

- ***The passage of time alone does not make the Attorney General's earlier legal analysis any more "correct."*** The Staff Report refers to a November 3, 1994, memorandum prepared by Supervising Deputy Attorney General Richard M. Frank. For reasons already explained, the County does not agree with the Primary Zone analysis included in that brief memorandum. That analysis is only as good today as it was at the time the memorandum was prepared. No deference should be accorded Mr. Frank's advice simply because of the passage of time. Indeed, a court will consider such deference only if the statutory language at issue is "susceptible of more than one interpretation." As discussed, and as the Staff Report appears to recognize, the "primary zone" definition is clear and unambiguous.

- ***Nothing Changes if the Map Was Available During the Legislative Process.*** Both Commission staff and the Appellants mention that some members of the Legislature were provided a copy of the map during an early committee hearing. The County does not believe this fact is significant. No assumptions can be made about the Legislature's intent, particularly at the time the Act was adopted, based on this fact alone. Indeed, the Legislature's adoption of a statutory definition with clear exclusionary language for certain urban areas should, if anything, be seen as either a knowing repudiation of contrary map content or evidence that the map preparers inadvertently failed to subsequently conform the map to the definition. Either conclusion would be far more reasonable than assuming the Legislature did not intend for the exclusionary language to apply in the manner in which it is so clearly written.

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[6] Inconsistencies between the definition and the map cannot be used to alter or disregard the clear language of the statutory definition of "primary zone" under the guise of statutory interpretation.

[7] *Allen v. Sully-Miller Contracting Co.* (2002) 28 Cal.4th 222, 227.

[8] *City of Huntington Beach v. Board of Administration of the Public Employees' Retirement System* (1992) 4 Cal.4th 462, 468.

- ***The Balance of the Legislative History Relied on in by the NRDC is Unrevealing.*** The NRDC places considerable weight on a small number of comments in the legislative history indicating that the exclusionary language in the "primary zone" definition was intended to apply to cities. (See, e.g., NRDC Appeal at pp. 6-7, Exhibits B-E.) The inference it draws is that unincorporated towns are not mentioned in these comments because they are within the Primary Zone. But this inference should be rejected. It is unsupported by an explanation of why unincorporated towns would be treated differently under the Act. Also, most of the referenced comments appear in letters directed to city officials or, in one instance, the League of California Cities. It is hardly surprising that such comments focus exclusively on the Act's effect on cities rather than unincorporated towns. Alternatively, these comments could also be explained as casual generalizations of the Act's more technical points. And lastly, a revised summary of Senate Bill 1866 prepared by Senator Johnston on March 6, 1992, (Exhibit A hereto) supports the conclusion that, consistent with the plain language of the "primary zone" definition, unincorporated towns with established boundaries were excluded from the Primary Zone.

- ***A Transcript of Remarks by Then-Senator Johnston on March 31, 1992 to the Board of Supervisors Indicates His Determination to Exclude Developed Unincorporated Areas of the Delta from the Primary Zone.*** During Board of Supervisors meetings on September 12, 2006, and October 24, 2006, Supervisor Helen Thomson, who was on the Board in 1992 when the Delta Protection Act was negotiated and enacted, stated her recollection that, at the time then-Senator Pat Johnston was seeking political support for his bill from the County, he had explicitly reassured her and her colleagues that unincorporated areas with established urban limit lines such as Clarksburg would not be included in the Primary Zone. To verify that recollection, Deputy County Counsel Philip J. Pogledich recently visited the Yolo County Archives to try to locate a recording of any meeting at which such reassurances may have been given. He found that, at a public hearing held by the Board on March 31, 1992, Senator Johnston did indeed provide such reassurances. Exhibit B attached hereto is a document prepared by Mr. Pogledich that includes a collection of verbatim statements made by then-Senator Johnston and others on this topic. It is clear from the dialogue between the former Senator and others present that Mr. Johnston had no intention of including developed unincorporated areas such as Clarksburg within the Primary Zone. The following remarks from then Senator Johnston are particularly revealing:

> We define the "primary zone" as those areas that local governments have told us are outside of their spheres of influence, their general plan areas. In other words, I didn't draw a map and do the reapportioning based on what I liked or didn't like. Instead, what I asked of all the counties and the cities was to instruct me as to their general plans and their studies areas and their urban limit lines—people use different terminology—but where they not

> only had grown, but where they wished to grow. And we accommodated those. Now, that doesn't mean there will be a[n] urbanization in each of those areas, because there are controversies with many of them. But we reserve that to be handled under current laws. What we're looking at is we're trying to make sure that the interior of the Delta that is not yet spoken for does not incrementally get eaten up by those jurisdictions that say "well, one more project won't matter, it's good for our economy."
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> [W]e asked each county and city to give us the maps. They gave us the maps and we gave them to the Department of Conservation at the state level and asked them to merge them into one map. Now, we're in the process of going back to each jurisdiction and saying "did we get it right?" We got it wrong in Contra Costa. Their Board of Supervisors passed an urban limit line and it was approved by the voters, but . . . we missed some spots, and as a consequence we are going back to the County to make sure it is correct. So both the language of the bill and the actual map that we will file with the Secretary of State is referenced in the law, will guide everyone. But the intent, the intent was not to second guess any jurisdiction. What they told us was their sphere of influence, we accepted.
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> * * *
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> We do have a map of Yolo County. But what I'd be glad to do is to, with your Planning Director and staff and anyone else, is to give you the map we have and you tell us whether it accurately reflects your county planning decisions. If it doesn't, I assure you, I will change the map and the legislation as well.

As these verbatim quotations make clear, former Senator Johnston assured the Board of Supervisors, in effect, that the final version of the map of the Primary Zone, which would accompany the final signed version of the bill if it became law, would exclude areas inside the County's urban limit lines. For reasons that remain mysterious to the County, the final version of the map did not reflect this assurance, though, as noted above, the final version of the statutory language itself did.

- ***Rossco Holdings, Inc. v. State of California is Easily Distinguished.*** *Rossco* involved an alleged conflict between maps of the "coastal zone," defined by statute as "that land and water area of the State of California . . . *specified on the maps* identified and set

forth" elsewhere in the Coastal Act, and certain statutory language generally describing the zone appearing later in the definition (i.e., the phrase "first major ridge line paralleling the sea"). The court successfully harmonized the map and this statutory language by concluding that the language was "merely descriptive of the rationale used by the Legislature in drawing the particular line on the maps." The County submits that there are at least two key differences between *Rossco* and the situation presented by these appeals.

First, *Rossco* concerned where the coastal zone boundary line should be, as the map and the statute appeared to differ. These appeals, however, are not about where the Primary Zone boundary should be drawn. Instead, at issue is *why the boundary line was not drawn at all* with respect to the established boundary of Clarksburg. It is thus not about the *placement* of a boundary line, but its *complete omission*. Unlike in *Rossco,* therefore, the map simply cannot decide this dispute. It is effectively silent on the issue before the Commission while the Act's exclusionary language is clear and specific. Accordingly, that language is determinative.[9]

Second, the exclusionary language at issue here is much different—and much more specific—than the vague and general "first major ridge line" phrase at issue in *Rossco*. As noted above, unlike the Coastal Act language considered in *Rossco,* the Act's exclusionary language for urban areas does not merely *describe* the Legislature's rationale for drawing a line on a map. It instead *defines* the boundaries of the Primary Zone by reference to urban limit lines and spheres of influence. The Primary Zone of the Delta, unlike the coastal zone, is therefore not exclusively "map-defined" in this key respect. The language of the Delta Protection Act and Coastal Act differ considerably, and the plain language of each supports a different outcome with respect to any "conflicts" with related maps.

As a final matter, in addition to the foregoing points, the County would like to clarify its past position (i.e., prior to the Old Sugar Mill project) regarding whether Clarksburg is in the Primary Zone. Both the Staff Report and papers submitted by the Appellants suggest that the County's position on this issue has recently changed. It has not.

For almost 14 years, the County has consistently interpreted the Act as excluding Clarksburg from the Primary Zone. This understanding appears in a County document prepared shortly after the Act was adopted (Exhibit C hereto), and also in other documents drafted in 1995 and 1997 in connection with the Resource Management Plan and related County General Plan

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[9] The Staff Report therefore reaches exactly the wrong conclusion in applying the rule that "the specific must control over the general." The map is not even "general" as to the proper placement of the Primary Zone boundary with respect to Clarksburg. It is functionally silent, and the unambiguous exclusionary language in the "primary zone" definition thus controls.

amendments (Exhibits D-E hereto). All of these documents expressly state the County's understanding that Clarksburg is outside of the Primary Zone. The Commission closely monitored those County actions and likely had many opportunities during those periods to take issue with the County's understanding. Yet while the County's files contain many communications with the Commission and other relevant documents, none dispute the County's understanding.

Instead, the County's files contain two Commission documents that support the County's current position:

- An April 18, 1994, letter from the Executive Director (Exhibit F hereto) stating that "[i]n some areas, the line [delineating the Primary Zone] may have been incorrectly mapped." The letter requested the County's review of a portion of the map to determine whether "the line reflects the definition" of the Primary Zone and, in particular, its exclusionary language for land within urban limit lines or spheres of influence. Notably, one of the maps submitted to the County for its review expressly excluded Clarksburg from the Primary Zone and instead showed the town as coming within the Secondary Zone. This map may reflect the Commission's "contemporaneous" understanding of what constituted the Primary Zone more accurately than the strained legal reasoning of former Commission legal counsel Richard Frank, as discussed above.

- An undated Commission memorandum, likely prepared in 1994 or 1995 (Exhibit D hereto, "Exhibit D" attached thereto), explaining that: "The jurisdiction of the Commission includes portions of five counties: Solano, Yolo, Sacramento, San Joaquin, and Contra Costa. *The planning jurisdiction excludes all cities, unincorporated communities designated for residential and commercial uses, and spheres of influence of cities.*" (Italics added.)

While the Commission appears to have changed its position after these communications, the County did not learn of the change until November 2004. At that time, the County was in the process of correcting an erroneous statement in the Draft EIR that the Old Sugar Mill project was located in the Primary Zone. It carefully considered information provided by the Commission and sought legal advice from outside counsel. In the end, it decided to adhere to its prior (and current) position that Clarksburg, including the project site, is outside of the Primary Zone for reasons explained above.[10]

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[10] One group of Appellants states that the recent Clarksburg General Plan (2001) "acknowledges that Clarksburg is in the Primary Zone." The referenced text of the Clarksburg General Plan, however, was referring to the entire "general plan area," which includes nearly 35,000 acres outside of the town that the County agrees is in the Primary Zone. (See Exhibit G hereto [excerpt of 2001 General Plan].)

The County submits that this position is correct and strongly supported by the plain, unambiguous language of the Act. If the Commission concludes otherwise, however, the following jurisdictional issue must also be resolved.

B. Even if the Old Sugar Mill Project Site is in the Primary Zone, it does not Constitute "Development" Under the Act.

Generally, where a local government approves a development project in connection with a general plan amendment, and that project occurs in the Primary Zone, the development must be consistent with the Regional Management Plan. (Pub. Resources Code, § 29763.5, subd. (a).) The Act defines "development" in broad terms, but it includes specified exemptions as well. Under the Act, "development" does *not* include:

> [c]onstruction, reconstruction, demolition, and land divisions within existing zoning entitlements, and *development within, or adjacent to, the unincorporated towns of the delta, as permitted in* the Delta Area Community Plan of Sacramento County and *the general plan of Yolo County, authorized prior to January 1, 1992.*[11]

The County submits that the Old Sugar Mill project falls within the scope of the italicized exclusionary language. The Act defines "unincorporated towns" as including the communities of Walnut Grove, Clarksburg, Courtland, Hood, Locke and Ryde. (Pub. Resources Code, § 29733.) As noted in the Introduction to this letter, development of the project site was not merely "permitted" as of January 1, 1992: an active industrial facility was operating at the site, as it had for several decades, and both the general plan designation (Industrial) and zoning (Heavy Industrial) of the site were compatible with this developed use. On this basis, it is clear that "development" of the project site, which lies entirely "within" Clarksburg, was "permitted" in the County General Plan as of January 1, 1992. Each element of this exclusionary language is satisfied.

The Staff Report, however, rejects this plain language interpretation of the Act. It asserts that the exclusion would apply only if the County General Plan had actually been amended to authorize (i.e., "permit") all aspects of the Old Sugar Mill project prior to January 1, 1992. Consequently, under this approach, the Old Sugar Mill project must now undergo Commission review solely because it includes some uses that differ from those in existence 15 years ago.

But this very narrow interpretation is badly flawed. If it were correct, it would cancel out the first part of the exclusion in section 29723, subdivision (b)(9), (for construction and other activities "within existing zoning entitlements") because:

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[11] Pub. Resources Code, § 29723, subd. (b)(9) (italics added)

- Under California law, a general plan could only be deemed to "permit" a particular development project if the project conformed to the land use designation and all policies in the general plan.[12]

- California law requires zoning to conform to land use designations in general plans. (Gov. Code, § 65860.) For this reason, zoning amendments are very commonly accompanied by general plan amendments, and vice versa. Any change in a general plan land use designation to "permit" a particular type of development or a specific project would likely have to include a companion zoning amendment.

- Because the first part of the exclusion addresses activities consistent with *zoning* as of January 1, 1992, the second part of the exclusion relating to development "permitted" in *general plans* would be redundant if it were narrowly interpreted—as suggested in the Staff Report—to cover only those instances where a specific project had already been fully addressed in the general plan. In that circumstance, the zoning would *already have changed* to mirror the change in land use designation.

Accordingly, the interpretation offered in the Staff Report is untenable. It violates established rules of statutory interpretation—most notably, the rule (see footnote 8, above) that all parts of a statute should be read together and construed in a manner that gives effect to each. This interpretation would also result in a number of other anomalies.

First, it would not resolve any perceived conflict between the "primary zone" definition and the map. The conflict would instead remain if the application of the exclusionary language in the definition of "development" turned on the land uses, rather than the physical locations, at issue. On the other hand, the County's interpretation would resolve this conflict. Read together, the definition of "primary zone," the map, and the exclusionary language in the "development" definition support a holistic reading of the Act by which the exclusionary language, in effect, reconciles the "primary zone" definition with the map. The Legislature was certainly aware of planned urbanization in unincorporated areas, and the Act can be interpreted as addressing such urbanization through the development exemption rather than an exclusion from the Primary Zone.

Second, the interpretation offered in the Staff Report would give the applicant an incentive to pursue an industrial project—which might well have more environmental impacts than the current project—as a means of avoiding a possible adverse consistency determination by the County or the Commission. The Act should not be interpreted in a manner that would create such detrimental incentives within the private sector. Moreover, nothing in the Act suggests that industrial development of the project area would be consistent with the purposes of the Act

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[12] *See* Governor's Office of Planning and Research, *General Plan Guidelines*, p. 164 (2003) ("[a]n action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment").

whereas commercial, residential, and retail uses would not. The primary goal of the Act is to protect agriculture, habitat, and recreational activities in the Delta against encroachment from urban uses. (Pub. Resources Code, § 29702.) This goal would not be served by policies that grandfather only certain urban land uses while requiring other such uses to submit to Commission jurisdiction. Here, the anomaly would be especially pronounced, as the above-referenced interpretation would permit a purely industrial project to go forward without Commission review while the relatively more innocuous uses being proposed would be subject to such review.

Thus, viewing the Act as a whole, and attempting to give meaning to each provision of the Act, even if the Old Sugar Mill project area is part of the Primary Zone, it is not subject to the consistency and findings requirements under sections 29763.5 and 29765, respectively. This interpretation is consistent with the map and the legislative history relied on by the Appellants, including Senator Johnston's September 2, 1992, letter to then-Governor Wilson urging his signature on the legislation. More importantly, it is also consistent with the plain language of the Act. The County thus encourages the Commission to carefully consider this approach in the event it concludes the project site is within the Primary Zone.

C. While the Approaches Set Forth in the Staff Report Would Render the Act Unconstitutional, the County's Approaches Each Avoid Such a Result.

Importantly, the interpretations offered in the Staff Report would each result in disparate treatment of local government entities within the Delta. On the one hand, the local police power of cities would be unaffected by the Act so long as development does not extend beyond city urban limit lines or spheres of influence. The Act would not apply to infill and redevelopment projects within such boundaries; nor would it apply to projects that convert agricultural land or habitat. On the other hand, however, the same would not be true for development of any sort occurring within urban limit lines established in county general plans. All "development" under the Act, regardless of its size, nature, or proximity to other urbanized areas, would be subject to the Resource Management Plan. Taking either approach in the Staff Report would thus inevitably single out a handful of small, unincorporated towns and subject development therein to a stringent regulatory scheme that applies in none of the other, far more extensive urban areas within the Delta. The California Constitution forbids this result for two reasons.

First, the Act is a "general law," and the Constitution states "[a]ll laws of a general nature have uniform operation." (Cal. Const. art. IV, § 16(a).) Under either interpretation offered in the Staff Report, the Act would violate this requirement by restricting the exercise of local police power by counties in situations where the local police power of cities remains undisturbed. The uniformity requirement in Article IV, section 16(a), prohibits such disparate treatment,

functioning in much the same way as the equal protection clause of the Fourteenth Amendment in the United States Constitution.

Two cases involving government agencies help illustrate the nature of the constitutional uniformity requirement for general laws. *In re Jacobson* (1936) 16 Cal.App.2d 497 involved the Legislature's creation of a system of courts in a manner that granted greater subject matter jurisdiction to city courts in populous regions than to the same courts in less populous regions—all without regard to the population of the city in which each court was located. (*Id.* at p. 498.) Finding that this scheme arbitrarily limited the jurisdiction of only some courts, the court deemed it in violation of the fundamental constitutional requirement that laws of a general nature have uniform application. (*Id.* at pp. 500-501.) Similarly, in *Mordecai v. Board of Supervisors* (1920) 183 Cal. 434, the California Supreme Court considered the Legislature's adoption of a comprehensive irrigation plan applicable only to districts in certain counties that had not adopted charters prior to a certain date. The court held that this approach was arbitrary and thus unconstitutional, stating:

> The legislature has the power . . . to legislate concerning the affairs of irrigation districts, but that power, like the power of the legislature to legislate on other subjects, must be exercised in the manner in which the constitution provides . . . . Before any grant of power to legislate on a particular subject can be held to be free of a general requirement governing all legislation, the intent of the constitution to that effect must be plain. No such intent appears in the present instance.

(*Id.* at pp. 441-442.) Just as in these opinions, the County submits that the Act would operate in an arbitrary and unconstitutional manner if either of the interpretations offered in the Staff Report were accepted.

Second, the Act delegates certain police powers to the Commission that are expressly reserved to all local governments under Article XI, section 7, of the California Constitution ("[a] city or county may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws"). This delegation is not necessarily unconstitutional so long as it is done to achieve a regional goal and is carried out through appropriate regulatory means that apply equally throughout the affected region (here, the Delta). But each of the interpretations included in the Staff Report transforms the Act into an unconstitutional statute that selectively divests counties, and counties alone, of their local police powers over land use matters within established urban boundaries. Singling out counties for such treatment is, even in the limited context of such development, plainly unconstitutional.

The County is aware that the Attorney General has published a formal opinion addressing similar issues with respect to the Act. (76 Ops.Cal.Atty.Gen. 145 (1993).) In that Opinion, the Attorney General recognized that there are certain "conditions under which the delegation of legislative power to a regional agency such as the Commission is permissible." (*Id.* at p. 148.) In particular, the Attorney General explained that such delegations of power are constitutional only if they are crafted to address "a regional purpose and need." (*Id.* at p. 149.) Not only must legislative findings of such a "purpose and need" appear in the statute, but the means used to achieve the statutory purposes must be "general and regional in application" rather than "local in nature and purpose." (*Ibid.*, citing *People ex rel. Younger v. County of El Dorado* (1970) 5 Cal.3d 480, 497.) The Opinion found that the Act includes appropriate constitutional safeguards, as the "powers conferred on the Commission are not for local purposes, but are to achieve the regional goals of preserving and enhancing the delta." (*Id.* at p. 150.)

This important conclusion is not disturbed by either of the County's arguments on the jurisdictional issues at issue in these appeals. Each of the County's arguments retains the "general and regional" application of the Act, preserving the Commission's regional planning authority as to all Delta land and water not included "within either the urban limit line or sphere of influence of any local government's general plan or currently existing studies, as of January 1, 1992." The same cannot be said, however, for the positions offered in the Staff Report. Those positions each result in the unequal treatment of cities and counties by selectively preempting the local police power *of counties alone* with respect to development occurring inside of established urban boundaries.

No basis for singling out counties appears in the Act. Nothing in the Act says or even suggests that the Commission requires authority over development within a handful of established urban boundaries—but not over development within all other established urban boundaries in the Delta—to effectively addresses a matter of state concern. In the limited context of such development, the delegation of local police power to the Commission is plainly unconstitutional. If the Act were interpreted to give the Commission authority over local planning decisions within the established boundaries only of towns like Clarksburg, which are few in number and geographically distant, it would cease to operate in a "general and regional" nature with respect to such development. Instead, it would be deemed to arbitrarily delegate the local police power of counties to the Commission without any meaningful connection to the broader regional goals of the Act.

In short, the Act is constitutional precisely because it provides for regional planning to address a matter of state concern. Should it fail to achieve this objective and operate instead on a selective, highly localized basis by targeting development within established *county but not city* general plan boundaries—as it would under the interpretations offered in the Staff Report—its constitutionality would also fail. The County urges the Commission to avoid this undesired result.

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For all of the reasons discussed above, and for those additional reasons that may be presented at the upcoming public hearing, the County respectfully requests that the Commission find that it lacks jurisdiction over the appeals.

Respectfully submitted,

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